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Morris I. Leibman, Chairman

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**Presidential Medal of Freedom  
Awarded to Chairman Leibman**

*In a ceremony in the White House on October 9, the Presidential Medal of Freedom was awarded to Morris I. Leibman, chairman of the Standing Committee on Law and National Security of the ABA. The citation which accompanied the award read:*

Attorney, teacher, scholar and philanthropist, Morris Leibman is living proof that a full career in the private sector can flourish hand in hand with civic and humanitarian duties. As a generous patron of the arts and charities, as a legal scholar as well as practitioner, as a founding member of the Georgetown University Center for Strategic and International Studies and as chairman of the American Bar Association's Standing Committee on Law and National Security, Morris Leibman has served selflessly to make America a just, healthy society within and a strong, secure nation without.

*In responding to the president, Mr. Leibman said:*

In the shadow of the assassination of recent hours, we thank the Lord that you, Mr. President, are here with us today. We continue to be inspired by your courage and total commitment.

I and the other awardees, I feel certain, are humbled by the privilege of participating in this ceremony. We understand that on this occasion we represent millions of citizens dedicated to our free society.

This is an occasion of remembrance and rededication. Remembrance of America's uniqueness, the noble experiment of government by a melting pot of free people. Rededication under your guidance to meaningful patriotism, to national purpose, to national will and strength and credibility.

Our great American ideals and goals lose vitality without vibrant expression. You, Mr. President, have

established yourself as the great communicator—a most important aspect of leadership in this world of competing and conflicting ideologies.

A number of us present here today have struggled with the problem of improving the systems, forums and structures for communicating American foreign policy, nationally and internationally. Under your presidency, we eagerly renew our dedication to this effort and look forward to working with you in your great responsibility for continuing the dialogue of western civilization and preserving the free world.

**Justice Submits Bill  
to Amend FOIA**

*In a hearing before the Senate Judiciary Subcommittee on the Constitution, the Justice Department on October 15 made public its proposed legislation amending the Freedom of Information Act. Called "The Freedom of Information Improvements Act of 1981," the bill was formally introduced in the Senate on October 20 by Sen. Orrin Hatch of Utah, chairman of the subcommittee, and given the number S.1751.*

*The bill was accompanied by a 74-page section by section analysis of the proposed changes. Apart from the fact that this analysis would be too long to print, your editor felt that it would be appropriate to limit ourselves to the several portions of the bill specifically related to intelligence and national security. The excerpts from the section by section analysis below have been selected with this in mind.*

*However, to provide our readers with a birdseye view of the other changes that are proposed by the bill, we are also reproducing the brief introduction to the section by section analysis.*

*The Justice Department's proposed bill did not, as had been anticipated, call for complete or substantial*

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## Bill to Amend FOIA

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*relief for the intelligence agencies from the disclosure provisions of FOIA. It is reported, however, that the Department plans to submit a second bill at an early date dealing with this matter.*

The bill proposes amendments to the Freedom of Information Act, 5 U.S.C. § 552, in order to improve the administration of the Act, remedy unforeseen problems that have arisen under the Act, correct judicial constructions of the Act which do not comport with the original intent of Congress, and generally balance the public interest in disclosure of government information with the public interest in effective government. The proposed amendments would improve the Act in several respects:

First, they would clarify several of the Act's exemptions and procedures in order to strengthen the protection given to information where disclosure would result in an unwarranted invasion of privacy, harm to the public interest in effective law enforcement, or harm to the legitimate commercial interests of private parties who have submitted information to the government, or where the threat of disclosure would harm the public interest in the effective collection of intelligence.

Second, the amendments would preclude the use of the Freedom of Information Act as a means to circumvent discovery rules by parties in litigation.

Third, the amendments would establish realistic time requirements for agencies to respond to requests and decide appeals, while assuring prompt responses to limited requests and requests which primarily benefit the general public.

Fourth, the amendments would establish procedures enabling submitters of confidential commercial or financial information to object to the government's release of such information.

Fifth, the amendments would permit the government to charge requesters fees that more closely reflect the actual costs of the government's search for and review of documents.

Sixth, the amendments would add two new exemptions relating to records generated in legal settlements and technical information the export of which is controlled by law.

### Standard for Judicial Review of Exemptions

The bill would relocate the second sentence in the existing subsection (a)(4)(B) of the Act, which sets forth the standards for judicial review of agency denials of requests under the Act, into new subsection (a)(4)(I). Subsection (a)(4)(I) would modify the current standard of *de novo* review where the requested information is withheld by an agency pursuant to ex-

emption (b)(1). In such cases, the court could order disclosure of such classified information only if it finds that the agency decision to withhold the material was arbitrary or capricious. With respect to all other exemptions, however, the bill would not affect the *de novo* standard of review.

This recommended change in the applicable standard of judicial review in cases where an agency withholds information pursuant to exemption (b)(1) reflects the particularly sensitive nature of documents relating to national security and foreign policy and the need to give substantial deference to an agency's classification decisions. In the Conference Report on the 1974 amendments to the Act, Congress made clear that even with a *de novo* standard of review, the court should give "substantial weight" to an agency's explanation of its classification actions. In construing the Act's present provisions for *de novo* review of national security exemptions under exemption (b)(1), the United States Court of Appeals for the District of Columbia Circuit has noted that "[f]ew judges have the skill or experience to weigh the repercussions of disclosure of intelligence information," and that "this is precisely the sort of situation where Congress intended the reviewing courts to respect the expertise of an agency."

Indeed, that same court has determined that summary judgment on the basis of the agency's affidavit alone should be granted in cases involving classified information where the affidavit shows merely the "plausibility" of the alleged harm of disclosure in a "reasonably detailed manner." While the Act provides that a reviewing court may, in cases where it is necessary and appropriate, review such documents *in camera* to evaluate the agency's classification decision, the court should not be called upon, in effect, to make the initial classification decision. A change to the traditional Administrative Procedure Act standard of review for arbitrary or capricious action from the present *de novo* standard would be more consistent with the courts' need to give "substantial weight" to an agency's "expertise."

### Additional Procedural Changes in Suits Under the Freedom of Information Act

Section 5(b) of the bill would also provide, in proposed subsection (a)(4)(I) of the Act, two procedural rules for litigation under the Act.

First, this revision would contain new language to clarify the requirement that the court maintain under seal the records and affidavits submitted *in camera* to the court in support of an exemption from disclosure. *In camera* review of confidential documents or explanatory affidavits may be appropriate in particular cases where the court determines that it cannot discharge its reviewing function based on information in

the public record. However, because *in camera* affidavits explain the significance of the disputed documents and put them into a broader context, the affidavits submitted by agencies are frequently as sensitive or even more sensitive than the records themselves. Without the assurance that such affidavits will not be disclosed, the agency may be faced with a serious dilemma in attempting to justify a withholding. The agency may risk summary judgment against it if it does not provide the court with confidential information justifying its position, yet risk greater disclosure of confidential information in the course of providing the court with an explanation justifying the withholding. Although almost all courts have respected the confidentiality of materials submitted *in camera*, there have been a few instances when this has not been done.<sup>1</sup> This amendment would provide that all materials submitted *in camera* would be maintained under seal.

Second, proposed subsection (a)(4)(I) would require the court to stay any order to release records pursuant to the Freedom of Information Act pending final determination of any appeal. Because disclosure of disputed documents prior to the decision on appeal would effectively moot the government's position, a provision that would provide for the stay of such disclosure orders is essential to preserve the government's rights of appeal. See *Providence Journal Co. v. Federal Bureau of Investigation*, 595 F.2d 889 (1st Cir. 1979).<sup>2</sup> The amended provision would make the stay mandatory, not discretionary as under present law.

#### **Disclosure of Information Relating to Terrorism, Organized Crime Or Foreign Counterintelligence Investigations**

Section 7(d)(4) of the bill would add a new subparagraph (G) to exemption (b)(7) that would enable the attorney general to exempt by regulation or order information relating to investigations of terrorism, organized crime or foreign counterintelligence. A number of law enforcement agencies have found that organized criminal elements, hostile foreign government intelligence agencies, and extremist political groups have attempted to use the Freedom of Information Act to uncover government informants in their midst or to discover information concerning government investigations. Such organizations have the in-

centive and the resources to use the Act systematically to gather, analyze, and piece together segregated pieces of information obtained from government files. The current application of the Act to such files necessarily presents a significant risk of inadvertent or unknowing disclosure of extremely harmful information. Indeed, acknowledgment of the very existence or non-existence of records relating to particular investigatory activities or designated individuals can provide valuable information to criminal organizations and harm law enforcement and national security interests. The bill would permit the attorney general to exempt from the Act investigations of organized crime, foreign counterintelligence and terrorism.

Those categories of organized crime, foreign counterintelligence and terrorism investigations to be exempted and the periods of time for which they would be exempted would be defined by regulations or orders promulgated by the attorney general. This procedure would allow the attorney general to continue to permit access to such files, for example those of a historical nature, where disclosure would not endanger personal safety or impair law enforcement. The attorney general's authority to exempt such records would extend not only to the law enforcement components of the Department of Justice, but also to other government law enforcement agencies.

### **State Department Documents Soviet Disinformation and Forgeries**

*The following paper was prepared by the Department of State in response to requests for information from a number of individuals, private groups, and foreign governments.*

In late 1979, agents of the Soviet Union spread a false rumor that the United States was responsible for the seizure of the Grand Mosque of Mecca.

In 1980, a French journalist was convicted by a French court of law for acting as a Soviet agent of influence since 1959.

In August 1981, the Soviet news agency TASS alleged that the United States was behind the death of Panamanian leader Omar Torrijos.

These are three examples of a stream of Soviet

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<sup>1</sup>In a still-pending case, the district court ordered disclosure of an *in camera* affidavit but, after a petition for rehearing by the agency, that disclosure order was vacated. *Baez, v. National Security Agency*, Civ. No. 76-1921 (D.D.C. Nov. 2, 1978; July 17, 1980). . . .

<sup>2</sup>In one case, for example, the district court initially ordered disclosure of classified information but, after reversal by the court of appeals, ultimately determined the informa-

tion to be exempt. Had the district court not stayed the disclosure order, the government would have been foreclosed from pursuing its ultimately successful appeal. *Weberman v. National Security Agency*, 490 F. Supp. 9 (S.D.N.Y. 1980) (ordering disclosure), rev'd, No. 80-6155 (2d Cir. Dec. 18, 1980) (unpublished), on remand, No. 77 Civ. 5058 (CLB) (S.D.N.Y. June 5, 1981) (denying disclosure); see also 507 F. Supp. 117 (S.D.N.Y. 1981) (on remand).

## Soviet Disinformation and Forgeries

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"active measures" that seek to discredit and weaken the United States and other nations. The Soviets use the bland term "active measures" (*aktivnyye meropriyatiya*) to refer to operations intended to affect other nations' policies, as distinct from espionage and counterintelligence. Soviet "active measures" include:

- Written or spoken disinformation;
- Efforts to control media in foreign countries;
- Use of Communist parties and front organizations;
- Clandestine radio broadcasting;
- Blackmail, personal and economic; and
- Political influence operations.

None of this is to be mistaken for the open, accepted public diplomacy in which virtually all nations engage extensively. Public diplomacy includes providing press releases and other information to journalists, open public broadcasting, and a wide variety of official, academic, and cultural exchange programs. By contrast, Soviet "active measures" are frequently undertaken secretly, sometimes violate the laws of other nations, and often involve threats, blackmail, bribes, and exploitation of individuals and groups.

Soviet "active measures" do not always achieve Moscow's objectives. In some cases, Soviet operations have failed because of ineptitude or because targeted individuals or governments have responded effectively. However, Soviet "active measures" have had some success, and they remain a major, if little understood, element of Soviet foreign policy.

The approaches used by Moscow include control of the press in foreign countries; outright and partial forgery of documents; use of rumors, insinuation, altered facts, and lies; use of international and local front organizations; clandestine operation of radio stations; exploitation of a nation's academic, political, economic, and media figures as collaborators to influence policies of the nation.

Specific cases of Soviet "active measures" included here are: the Soviet anti-theater nuclear force (TNF) campaign in Europe, the Soviet anti- "neutron bomb" campaign; Soviet activities in support of the leftists in El Salvador; the Soviet campaign against the U. S.-Egypt relationship and the Camp David process.

"Active measures" are closely integrated with legitimate activities and Soviet foreign policy. Decisions on "active measures" in foreign countries are made at the highest level of authority in the U.S.S.R. — in the Politburo of the Communist Party Central Committee — as are all other important decisions of Soviet foreign policy.

The activities are designed and executed by a large and complex bureaucracy in which the KGB and the

International Department of the Communist Party of the Soviet Union (CPSU) Central Committee are major elements. The International Information Department of the CPSU Central Committee is also deeply engaged in such activities. Actual operations abroad are carried out by official and quasi-official Soviet representatives, including scholars, students, and journalists, whose official Soviet links are not always apparent. The highly centralized structure of the Soviet state and the state's pervasive control and direction of all elements of society give Soviet leaders impressive free use of party, government, and private citizens in orchestrating "active measures."

The open societies of the industrial democracies and many developing nations, and the ease of access to their news media, often give Soviets open season for "active measures." Many Western and developing countries ignore or downplay Soviet "active measures" until Soviet blunders lead to well-publicized expulsions of diplomats, journalists, or others involved in these activities. The Soviets are adept at making their policies appear to be compatible or parallel with the interests of peace, environmental and other groups active in Western and developing societies.

By contrast, the Soviet Union denies access to its mass media for foreigners who might criticize Soviet society or the foreign policies of the U.S.S.R.

While the United States remains the primary target, Moscow is devoting increasing resources to "active measures" against the governments of other industrialized countries and countries in the developing world. Moscow seeks to disrupt relations between states, discredit opponents of the U.S.S.R., and undermine foreign leaders, institutions, and values. Soviet tactics adjust to changes in international situations but continue, and in some cases intensify, during periods of reduced tensions.

### "Active Measures" Techniques

The tactics and emphasis of Soviet "active measures" change to meet changed situations. For instance, Soviet use of Marxist-Leninist ideology to appeal to foreign groups often turns out to be an obstacle to the promotion of Soviet goals in some areas; it is now being deemphasized though not completely abandoned. At the same time, some religious themes — notably the Soviet assertion that the Islamic religion occupies a favorable position in the U.S.S.R. — have assumed greater significance, as Moscow courts Islamic countries in Africa and the Middle East.

Similarly, while Soviet-dominated international front groups still are important in Soviet "active measures" abroad, Moscow is broadening its base of support by using more single-interest groups and fronts formed for particular purposes to promote its goals.

Soviet "active measures" involve a mix of ingenious and crude techniques. A brief sample of types of activities includes the following.

**Efforts to Manipulate the Press in Foreign Countries.** Soviet agents frequently insert falsely attributed press material into the media of foreign countries. In one developing country, Soviets used more than two dozen local journalists to plant media items favorable to the U.S.S.R. Soviets have also used the Indian news weekly *Blitz* to publish forgeries, falsely accuse Americans of being CIA personnel or agents, and disseminate Soviet-inspired documents. In another country, the Soviets used local journalists to exercise substantial control over the contents of two major daily newspapers.

**Forgeries.** Soviet forgeries—completely fabricated or altered versions of actual documents—are produced and circulated to mislead foreign governments, media, and public opinion. Recent Soviet forgeries are better and appear more frequently than in the past. Among forgeries that Soviet agents have produced and distributed are bogus U.S. military manuals and fabricated war plans designed to create tensions between the United States and other countries. In some cases, the Soviets used actual documents passed to the KGB by U.S. Army Sergeant Robert Lee Johnson (who was eventually arrested and convicted as a Soviet agent) as models for style and format in Soviet forgeries. In one case, Soviet agents, seeking to disrupt NATO theater nuclear force modernization, circulated a forged "top secret" letter from Secretary of State Cyrus Vance to another Western foreign minister.

**Disinformation.** Soviet agents use rumor, insinuation, and distortion of facts to discredit foreign governments and leaders. In late 1979, Soviet agents spread a false rumor that the United States was behind the seizure of the Grand Mosque of Mecca. In another case, Soviet officials "warned" officials of a West European country that the CIA had increased its activities in the country and that a coup was being planned. Sometimes these disinformation campaigns appear in foreign media suborned by the Soviets, enabling Moscow to cite foreign sources for some of the distortions and misstatements that often appear in the Soviet media. A recent and particularly egregious example was the August 1981 TASS allegation that the United States was behind the death of Panamanian General Omar Torrijos.

**Control of International and Local Front Organizations.** Moscow controls pro-Soviet international front organizations through the International Organizations Section of the International Department of the CPSU Central Committee. Front organizations are more effective than openly pro-Soviet groups because they can attract members from a broad political spectrum.

Prominent among these fronts are the World Peace Council, the World Federation of Trade Unions, the World Federation of Democratic Youth, and the Women's International Democratic Federation. Moscow's agents use Soviet "friendship" and cultural societies in many countries to contact people who would not participate in avowedly pro-Soviet or Communist organizations. The function of front, "friendship," and cultural groups is to support Soviet goals and to oppose policies and leaders whose activities do not serve Soviet interests.

To complement organizations known for pro-Soviet bias, the Soviets sometimes help establish and fund ad hoc front groups that do not have histories of close association with the Soviet Union and can attract members from a wide political spectrum.

**Clandestine Radio Stations.** The Soviet Union operates two clandestine radio stations: the National Voice of Iran (NVOI) and Radio Ba Yi, which broadcast regularly from the Soviet Union to Iran and China. Moscow has never publicly acknowledged that it sponsors the stations, which represent themselves as organs of authentic local "progressive" forces. The broadcasts of both of these Soviet stations illustrate the use of "active measures" in support of Soviet foreign policy goals. For instance, NVOI broadcasts to Iran in 1979-80 consistently urged that the American diplomatic hostages not be released, while Soviet official statements supported the hostages' claim to diplomatic immunity.

**Economic Manipulation.** The Soviet Union also uses a variety of covert economic maneuvers in "active measures" operations. For example, a Soviet ambassador in a West European country warned a local businessman that his sales to the U.S.S.R. would suffer if he went ahead with plans to provide technical assistance to China. In another industrialized country, Soviet agents sought to increase local concern over the stability of the dollar by driving up the price of gold. This was to be accomplished by manipulating a flow of both true and false information to local businessmen and government leaders. The gambit failed because the Soviet officials who attempted to carry it out did not fully understand the financial aspects of the operation.

**Political Influence Operations.** Political influence operations are the most important but least understood aspect of Soviet "active measures" activities. These operations seek to exploit contacts with political, economic, and media figures in target countries to secure active collaboration with Moscow. In return for this collaboration, Soviet officials offer inducements tailored to the specific requirements or vulnerabilities of the individual involved. In 1980, Pierre-Charles

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## **Soviet Disinformation and Forgeries**

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Pathe, a French journalist, was convicted for acting as a Soviet agent of influence since 1959. His articles—all subtly pushing the Soviet line on a wide range of international issues—were published in a number of important newspapers and journals, sometimes under the pseudonym of Charles Morand. The journalist also published a private newsletter which was regularly sent to many newspapers, members of parliament, and a number of foreign embassies. The Soviets used Pathe over a number of years to try to influence the attitudes of the prominent subscribers to his newsletter and to exploit his broad personal contacts.

In other cases, Soviet officials establish close relationships with political figures in foreign countries and seek to use these contacts in “active measures” operations. Capitalizing on the host government official’s ambition, his Soviet contact claims to be a private channel to the Soviet leadership. To play upon his sense of self-importance and to enhance his credibility within his own government, the host government

official may be invited to meetings with high-level Soviet leaders. The Soviets then exploit the local official to pass a mixture of true, distorted, and false information—all calculated to serve Soviet objectives—to the host government.

**Use of Academicians and Journalists.** Soviet academicians, who often are accepted abroad as legitimate counterparts of their non-Soviet colleagues, frequently engage in “active measures.” Unlike their free world counterparts, they must play two roles—their legitimate academic pursuit of knowledge for its own sake and their political activities on behalf of the Kremlin. Soviet academicians are obliged to obey instructions from bodies which plan and control Soviet “active measures” activities. Similarly, Soviet journalists often engage in “active measures” operations in addition to serving as representatives of Soviet news agencies. One KGB officer in an industrialized country used his journalistic cover to pass forgeries, as well as to publish numerous propaganda articles aimed at influencing the media of the host country.

*To be continued next month*

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